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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/549,002 04/14/00 HASSLER

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EXAMINER

MARKOVICH, K

ART UNIT

PAPER NUMBER

3671
DATE MAILED:

10/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/549,002

Applicant(s)
Hassler

Examiner
Kristine Markovich

Art Unit
3671



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Aug 14, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-7, 10, and 11 is/are pending in the application

4a) Of the above, claim(s) _____ is/are withdrawn from consideration

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-7, 10, and 11 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

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Response to Amendment

Claim Objections

1. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner (US Patent 5,308,188) in view of Grosh (US Patent 3,974,599) and Wiedrich (5,956,905).

Shaftner discloses a resilient, replaceable collar having a body with upper and lower surfaces (10, figure 1). An opening is provided through the center and sized to accommodate the outer periphery of the roadway structure (12, figure 1), and the side walls of the collar are sloped and extend downward from the upper surface of the body to the lower surface of the body (11, figure 1).

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The collar is made from an elastomeric material (column 2, lines 1-3 and column 3, lines 54-57) and the specific roadway structures it surrounds are utility access holes, such as manhole covers, gas and water utility covers, storm sewer inlets, etc (column 1, lines 9-11). The roadway pavement is stripped such that the collar is used for placement around an access hole which is temporarily elevated (column 1, lines 9-18). The collar is circular with a central circular opening to snugly engage the access hole. The collar can also be designed to be rectangular in shape with a circular central opening (figure 4). The collar body has a height equal to the distance the roadway structure extends above the roadway pavement (figures 2 and 3). The collars can be stacked one on top of the other to provide for a riser effect such that together they have a height equal to the distance the roadway structure extends above the roadway pavement (column 1, lines 50-52, column 3, lines 39-44).

Shaftner discloses the claimed device except for the upper surface is in planar alignment with the upper surface of the roadway structure. Grosh discloses that it is known in the art to provide an upper surface of a collar in planar alignment with the upper surface of a roadway structure (figures 1 and 2) such that the surfaces can be aligned easily making transition of the vehicle tire to the roadway structure smooth. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the collar of Shaftner with the planar surface of Grosh, in order to more easily align the surfaces making transition of the vehicle tire to the roadway structure more even.

Regarding the limitation of a riser provided to adjust the height of the top of the collar body to the height of the roadway structure, Shaftner clearly teaches the use of using one collar as a riser for another collar to adjust height (column 3, lines 39-44). Wiedrich additionally discloses that it is known in the art to provide risers to make height (14, figure 1) adjustments. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the height adjusting collar system of Shaftner with the risers of Wiedrich, in order to adjust the height of the collar system.

Response to Arguments


4. Applicant's arguments with respect to all claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine M. Markovich whose telephone number is (703) 305-1676. The examiner can normally be reached on Mon-Fri from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3780. The fax phone number for this Group is (703)305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600


KMM
October 18, 2001